

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 10, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REAL PROPERTY KNOWN AS 107
NORTH RUBY STREET,
ELLENSBURG, WASHINGTON,
TOGETHER WITH ALL
APPURTENANCES, FIXTURES,
ATTACHMENTS, AND
IMPROVEMENTS THERETO AND
THEREUPON,

Defendant.

No. 1:24-CV-3091-MKD

ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT AND
FINAL ORDER OF FORFEITURE

ECF No. 15

Before the Court is the United States' Motion for Default Judgment and Final Order of Forfeiture. ECF No. 15. The Court has considered the briefing and the record and is fully informed. For the reasons discussed below, the Court grants the motion and enters the following Final Order of Forfeiture.

BACKGROUND

On June 25, 2024, the United States filed a Verified Complaint for Forfeiture

1 *in Rem* against Defendant (the “Defendant Property”), for violations of Title II of the
2 Controlled Substances Act, 21 U.S.C. § 801 *et seq.* ECF No. 1 at 2. On September
3 27, 2024, an Amended Clerk’s Order of Default was entered against potential
4 claimants June B. Green, the June B. Green Trust, Lisa Schelper, and Steven
5 Schelper. ECF No. 14.

6 **DISCUSSION**

7 The United States moves for default judgment against the interests of June B.
8 Green, the June B. Green Trust, Lisa Schelper, and Steven Schelper in the Defendant
9 Property and for entry of a final order of forfeiture that vests all right, title, and
10 interest in the Defendant Property in the United States. ECF No. 15 at 1-2.

11 **A. Jurisdiction**

12 “When entry of judgment is sought against a party who has failed to plead or
13 otherwise defend, a district court has an affirmative duty to look into its jurisdiction
14 over both the subject matter and the parties” to “determine whether it has the power
15 ... to enter the judgment in the first place.” *In re Tuli*, 172 F.3d 707, 712 (9th Cir.
16 1999) (citations omitted).

17 The federal district courts have original jurisdiction over “all civil actions,
18 suits or proceedings commenced by the United States,” 28 U.S.C. § 1345, and “any
19 action or proceeding for the recovery or enforcement of any fine, penalty, or
20 forfeiture, pecuniary or otherwise, incurred under any Act of Congress[.]” 28 U.S.C.

1 § 1355(a). “[I]n a civil forfeiture proceeding *in rem*, jurisdiction is dependent upon
2 seizure of ... the property in dispute.” *United States v. Obaid*, 971 F.3d 1095, 1099
3 (9th Cir. 2020) (citation, quotation marks, and alterations omitted). “A forfeiture
4 action or proceeding may be brought in ... the district court for the district in which
5 any of the acts or omissions giving rise to the forfeiture occurred” 28 U.S.C. §
6 1355(b)(1)(A).

7 Because the United States commenced this civil forfeiture proceeding under
8 21 U.S.C. § 881(a)(7), the matter is within the Court’s subject matter jurisdiction.
9 The United States alleges the Defendant Property, located in the Eastern District of
10 Washington, was used to commit and/or facilitate the commission of violations of
11 the Controlled Substances Act. ECF No. 1 at 3. Therefore, the Court has *in rem*
12 jurisdiction over the Defendant Property, and venue is proper in the Eastern District
13 of Washington. *See Obaid*, 971 F.3d at 1099; 28 U.S.C. § 1355(b)(1)(A).

14 **B. Procedural Requirements**

15 A motion for default judgment is subject to the provisions of Fed. R. Civ. P.
16 55 and LCivR 55. The United States moved for and obtained entry of default
17 against all potential claimants in accordance with LCivR 55(a) and has moved for
18 default judgment in accordance with LCivR 55(b). ECF Nos. 14, 15, 15-1.

19 Forfeiture actions *in rem* are also subject to the procedural requirements of
20 Fed. R. Civ. P. G. The Verified Complaint for Forfeiture *in Rem*, ECF No. 1,

1 complies with the requirements of Rule G(2). The United States published notice of
2 the forfeiture action on an official internet government forfeiture site for 30
3 consecutive days, beginning on July 10, 2024, and ending on August 8, 2024, in
4 compliance with Rule G(4)(a). ECF No. 7. The United States also sent direct notice
5 to Lisa Schelper and Steven Schelper on July 10, 2024, in compliance with Rule
6 G(4)(b). ECF No. 3.

7 **C. Substantive Requirements: *Eitel* Factors**

8 Upon default, the Court assumes that the well-pleaded allegations in the
9 complaint are true, except those relating to the amount of damages. *Geddes v.*
10 *United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (citing *Pope v. United States*,
11 323 U.S. 1, 12 (1944)). The Court considers seven factors in exercising its
12 discretion to enter a default judgment: “(1) the possibility of prejudice to the
13 plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the
14 complaint, (4) the sum of money at stake in the action[,], (5) the possibility of a
15 dispute concerning material facts[,], (6) whether the default was due to excusable
16 neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure
17 favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th
18 Cir. 1986).

19 *1. Possibility of Prejudice*

20 Under the first *Eitel* factor, “prejudice exists where the plaintiff has no

1 recourse for recovery other than default judgment.” *Curtis v. Illumination Arts, Inc.*,
2 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014) (citation and quotation marks
3 omitted). Because all potential claimants are in default, the United States has no
4 recourse other than default judgment for disposition of the Defendant Property. The
5 first *Eitel* factor weighs in favor of default judgment.

6 2. Merit of Claims and Sufficiency of the Complaint

7 Under the second and third *Eitel* factors, the Court finds that the United
8 States’ substantive claims have merit and are sufficiently pleaded. *See Eitel*, 782
9 F.2d at 1471-72. The United States seeks forfeiture of the Defendant Property under
10 21 U.S.C. § 881(a)(7). ECF No. 1 at 3. The Verified Complaint for Forfeiture *in*
11 *Rem* contains detailed factual allegations about drug-related activity occurring at the
12 Defendant Property. *Id.* at 3-31.

13 3. The Sum of Money at Stake

14 Next, the Court must consider the sum of money at stake in the action when
15 determining whether default judgment is appropriate. *See Eitel*, 782 F.2d at 1471-
16 72. “Default judgment is disfavored if the sum of money at stake is completely
17 disproportionate or inappropriate” in relation to the seriousness of a defendant’s
18 conduct. *Hygenix, LLC v. Xie*, 2022 WL 1094181, at *3 (D. Nev. Apr. 11, 2022)
19 (citation and quotation marks omitted). There is no indication here that the value of
20

1 the Defendant Property is disproportionate or inappropriate, and as noted above, the
2 United States has established a *prima facie* civil forfeiture claim.

3 *4. Possibility of a Dispute Concerning Material Facts*

4 Where no dispute has been raised, the likelihood that any such dispute exists
5 is remote. *See Brow Room v. Med. Laser Experts, LLC*, 2021 WL 5830023, at *2
6 (E.D. Wash. Dec. 8, 2021). There is no information before the Court that supports
7 the possibility of a dispute concerning any material facts.

8 *5. Excusable Neglect*

9 The potential claimants' default does not appear to be the result of excusable
10 neglect. The United States also gave proper notice by direct means and publication,
11 as required by Rule G. ECF Nos. 3, 7; *see BMO Bank N.A. v. Raiden, LLC*, No. 23-
12 cv-1465, 2023 WL 8934854, at *2 (W.D. Wash. Dec. 27, 2023) ("Generally, courts
13 do not find excusable neglect when defendants were properly served with the
14 complaint.") (citation omitted).

15 *6. Policy Consideration*

16 Last, the general rule is that "[c]ases should be decided upon their merits
17 whenever reasonably possible." *Eitel*, 782 F.2d at 1472 (citing *Pena v. Seguros La*
18 *Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)). While this factor inherently
19 weighs against default judgment, "the mere existence of" Fed. R. Civ. P. 55(b)
20 "indicates that this *Eitel* factor is not alone dispositive." *Curtis*, 33 F. Supp. 3d at

1 1213 (quoting *Microsoft Corp. v. Lopez*, 2009 WL 959219, at 3 (W.D. Wash. Apr. 7,
2 2009)) (quotation marks and alteration omitted). “[W]here a defendant’s failure to
3 appear ‘makes a decision on the merits impracticable, if not impossible,’ entry of
4 default judgment is nonetheless warranted.” *Elec. Frontier Found. v. Global Equity*
5 *Mgmt. (SA) Pty Ltd.*, 290 F. Supp. 3d 923, 948 (N.D. Cal. 2017) (quoting *Craigslist,*
6 *Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010)). Here, no
7 potential claimant with a continuing right to challenge these proceedings has
8 appeared, making a decision on the merits impossible.

9 In sum, the *Eitel* factors weigh in favor of granting default judgment.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. The United States’ Motion for Default Judgment and Final Order of
12 Forfeiture, **ECF No. 15**, is **GRANTED**.

13 a. Default Judgment is entered against the interests of June B. Green, the
14 June B. Green Trust, Lisa Schelper and Steven Schelper.

15 b. The Defendant Property is hereby forfeited to the United States, and no
16 right, title, or interest shall exist in any other person or entity.

17 c. The United States Marshals Service shall dispose of the forfeited
18 property described herein in accordance with law.

19 d. The Court shall retain jurisdiction in the case for purpose of enforcing
20 or amending this order.

1 **IT IS SO ORDERED.** The District Court Executive is directed to file this
2 order, **enter judgment accordingly**, and **CLOSE the file**.

3 DATED October 10, 2024.

4 s/Mary K. Dimke
5 MARY K. DIMKE
6 UNITED STATES DISTRICT JUDGE
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